IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition Nos.22722 of 1999 and 19452 of 2000

Dated: 26-07-2007

W.P.No.22722 of 1999

Between:
1. Tadakamalla Ramchander Rao and others.

... Petitioners

and

1. The Principal Secretary to Government of Andhra Pradesh, I & CAD Department, Secretariat, Hyderabad and 3 others.

... Respondents

W.P.No.19452 of 2000

Between:
1. Kota Pullaiah and others.

... Petitioners

and

1. The Principal Secretary to Government of Andhra Pradesh, I & CAD Department, Secretariat, Hyderabad and 3 others.

... Respondents

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THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition Nos.22722 of 1999 and 19452 of 2000

COMMON ORDER:

As respondents are similar and the point involved in these writ petitions is one and the same, they are heard and disposed of by this common order.

2. These writ petitions are filed seeking *mandamus* to declare the action of respondents in determining the compensation in respect of petitioners' lands in an extent of Acs.5-28 guntas and Acs.3-34 guntas respectively, by applying the provisions of the Nagarjuna Sagar Project (Acquisition of Land) Act 32 of 1956 (for short, 'Nagarjuna Sagar Act') in award No.B/596/89/94-96 passed in the month of September, 1994 and in Award No.4/83 dated 11.03.1983 respectively, as totally illegal and unconstitutional; and consequently direct respondents to pay compensation as per the market value fixed as on the date of 4(1) notifications dated 17.09.1992 and dated 01.06.1982 respectively issued under the provisions of the Land Acquisition Act, 1894 (for short, 'Land Acquisition Act') with all consequential benefits including referring the matters to the Civil Court under Section 18 of the Land Acquisition Act.

3. It is the case of petitioners that the Government acquired their lands under two different notifications and advance possession was also taken. Their common grievance is that second respondent while passing

the impugned awards applied the provisions of Nagarjuna Sagar Act instead of the provisions of the Land Acquisition Act. It is stated that though they protested and sought reference under Section 18 of the Land Acquisition Act, respondents have neither referred the matters nor paid compensation as determined under the provisions of the Land Acquisition Act. It is further stated that though this Court struck down the provisions of Nagarjuna Sagar Act as violative of Article 31(A) of the Constitution of India, respondents have determined the compensation as per the provisions of Nagarjuna Sagar Act, instead of the provisions of the Land Acquisition Act.

4. Heard learned counsel for the parties.

6. No doubt, in the counter affidavits filed on behalf of respondents all the averments made by petitioners are denied and they have stated that the distribution of compensation under the provisions of Nagarjuna Sagar Act is valid.

7. The parliament in its wisdom made an amendment to the Constitution of India, and thus Section 31-A of the Constitution was inserted by the Constitution (First Amendment) Act, 1951. According to which no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights etc., shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19. According to the second proviso to the said Article where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant

thereto unless the law relating to acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

8. When a case with similar facts came up for a debate, a Division Bench of this Court in **K. RANGAIAH v. STATE**[1], had clearly stated that applying the provisions of the Nagarjuna Sagar Act for those acquisitions made after 20-06-1964 is ultra vires of Article 31-A of the Constitution of India. In paragraph 7 of the said judgment, it is held as follows--

> 7. It was however sought to be argued by the learned Advocate-General that the second proviso which was introduced by the Constitution (7th amendment) Act and which came into effect on 20-06-1964 cannot affect the Nagarjunasagar Act of 1956. He drew our attention in this connection to the fact that both the Constitution (First Amendment) Act which introduced Art.31-A and the Constitution (Fourth Amendment) Act which imposes certain amendment to Art.31-A expressly provided that they will have retrospective effect; whereas no such provision was made by the Constitution (Seventh amendment) Act. We are unable to accept that contention of the learned Advocate-General. As has been held by the Supreme Court the second proviso introduced by the Constitution (First Amendment) Act creates a fundamental right in favour of persons who own lands within the ceiling limit and are cultivating them personally. The Constitution categorically states that such lands cannot be acquired except on payment of the market value on the date of the notification. Any law providing for payment of market value of les than that amount or any acquisition made under such law would infringe the fundamental right guaranteed to the owners of the land under Art.31-A. Therefore, there can be no doubt that law which infringes a fundamental right even though passed before the amendment of the Constitution under which the fundamental right is conferred, would thereafter have no effect. It is true that the Constitution (Seventh Amendment) Act is not retrospective. It cannot therefore affect any acquisition made prior to the date when it came into force that is, prior to 20-06-1964. But any acquisition made subsequent to that date must

> conform to the requirements of Art.31-A as amended. If it does not, it would infringe the fundamental right guaranteed to the owner of the land under Art.31-A second proviso and would be void. We have therefore no hesitation in holding that S.23(1) of the Land Acquisition Act as amended by the Nagarjunasagar Act is ultra vires Art.31-A in so far as it applies to acquisition of lands made after 20-06-1964 within the ceiling limit and under personal cultivation of a person.

9. Looking at the case on hand, this Court is of the view that the application of the provisions of Nagarjuna Sagar Act for determination of compensation can definitely be said to be violative of Article 31-A of the Constitution of India. Evidently Section 4(1) notifications in the instant cases were published in the Gazette on 17.09.1992 and 01.06.1982 respectively and thereafter after following due procedure under law, the authorities have determined the compensation both under the Nagarjuna Sagar Act as well as the Land Acquisition Act. As the said determination itself makes it amply clear that even the Government is not certain as to whether petitioners are entitled for compensation under the Nagarjuna Sagar Act or under the provisions of the Land Acquisition Act. Having regard to the fact that the provisions of Nagarjuna Sagar Act have no application for those acquisitions that have taken place prior to 20-06-1964 and as Section 4(1) notifications in the instant cases are 17.09.1992 and 01.06.1982, this court is of the view that petitioners are entitled for compensation under the provisions of the Land Acquisition Act.

10. Learned counsel for petitioners Sri C.Yadagiri and Sri Bathini Papa Rao Goud at this juncture submit that though petitioners gave applications seeking reference under Section 18 of the Land Acquisition Act, the authorities have not referred the same to the Civil Court for determination of the compensation. As the said petitions seeking reference are pending before the authorities and if the said petitions are

within time as provided for under Section 11(A) of the Land Acquisition Act, the authorities are directed to refer the matters for proper determination of the compensation to the competent Civil Court.

11. Accordingly, these two writ petitions are allowed and respondents are directed to pay compensation in terms of the provisions of the Land Acquisition Act and refer the matters to the competent Civil Court for proper determination of the compensation as provided for under Section 18 of the Land Acquisition Act.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.26-07-2007
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[1] AIR 1980 AP 165